



September 12, 2007

By Electronic Filing

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: Ex Parte Notice; WC Docket Nos. 06-125

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, COMPTEL hereby gives notice that, on September 11, 2007, its representative met with Commissioner Robert McDowell with regard to the above-referenced proceeding. In this meeting, COMPTEL explained that the FCC should deny the petitions in the above-captioned docket for two different reasons, which are consistent with, or distinguishable from, prior Commission action on similar matters.

First, COMPTEL encouraged the FCC to deny the petitions and noted that the FCC could distinguish such a denial from previous orders on the basis of experience, and the statutes interpreted. The FCC could distinguish from TRRO by explaining that the analysis required under 251(d)(2) is essentially a barriers-to-entry analysis, and requires the FCC to develop easy-to-implement "proxies" for whether competitors would likely be able to enter a market with, or without, the network element in question. As a result, that analysis is--of necessity--speculative, forward looking, and focused on the "supply side" (barriers to entry).

However, section 10 specifically requires a "demand side" (from the customer's perspective) analysis. The FCC has to look at whether "in any or some" of the carrier(s) "geographic market(s)" the rules/statutory provisions in question are still necessary to (a) protect consumers and (b) promote competition. A petitioner must show real "here and now" competition

sufficient to protect consumers, absent the rules in question. The finding is not forward-looking or speculative. In the above-referenced docket, the record fails to convince that, with respect to the major customers purchasing commercial broadband services, there is sufficient local competition to protect these consumers in the absence of FCC enforcement of the statutory provisions and rules from which the Bells seek forbearance; much less support a finding that a grant of forbearance would actually "promote" competition.

Second, a denial of the above-referenced petitions would be consistent with the Commission's action in the Cable Modem/Wireline Broadband Dockets. For example, in the Wireline Broadband Classification Order, the FCC noted that certain services, like high-speed Internet services, contain transmission components, but that this--in itself--did not mean that these services were necessarily telecommunications services. The FCC has previously found (8/31/07) that the nationwide interexchange data services are competitive markets. However, like the case in the Wireline Broadband Order, when FCC found that when the transmission components are offered separately they are subject to the rules that apply to telecommunications services, the Commission should find that petitioners here have provided no evidence or other explanation to convince the FCC to act any differently. Thus, the petitioners have not shown that, when the service is offered solely as a local transmission service, there is any basis on which the FCC could reasonably determine that the statutory provisions of Title II and the FCC Rules are no longer necessary to protect consumers or to promote competition for these services.

Representing COMPTel was the undersigned attorney.

Sincerely,  
/s/ Jonathan Lee